IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.699 OF 1997.

Pundlik Gangaram Shinde : Appellant.

versus

Bashes Hasten Sayyad Zamir

Hasan & Anr. : Respondents.

ALONG WITH

FIRST APPEAL NO.997 of 1998

Bashir Dagumiya Maniyar : Appellant.

versus

Bashir Hasan Sayyed Zamir

Hasan & Anr. : Respondents.

Mr.Hardas i/by P.N.Joshi for the appellants.

Mr.D.R.Mahadik i/by S.R.Singh for respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 4th March 2005.

ORAL ORDER

1. These two appeals have been filed by the original claimants challenging the order of the tribunal exonerating the Insurance Company from the liability. The accident took place when both the appellants were going by a truck from Dwarka Point, Nashik to Pimpalgaon Baswant. A mob had gathered on the road. The mob was pelting stones on all the vehicles and, thereafter this truck, by which the claimants, were going on, dashed against a tree resulting in injuries to both the claimants.

2. Both the claimants had contended that they were going by the truck along with their goods and, therefore, they were the persons accompanying their baggage. The tribunal rejected the contentions of both the claimants and granted award only against the owner of the truck. Hence these appeals.

3. Even though the same question is involved in both these appeals, the facts, as proved by the evidence, are different. So far as Appeal

No.997 of 98 is concerned, it is an appeal filed by one Bashir Maniyar. In his evidence, he has stated that at about 12 midnight, intervening 2.11. and 3.11.84 he boarded the truck MWD 5952 near Dwarka Point as he had to carry his luggage, bundle of gunny bags and empty boxes. He kept the luggage that was with him in the truck and he had to pay Rs.25/- as luggage charges as he had to go to Pimpalgaon from Dwarka Point. The counsel for the appellant contended that in the panchanama of the scene of offence this story of this witness/claimant is fully corroborated. Because in the panchanama it is stated that in a portion of a truck just by side of the cabin there were empty cartoon. Apart from this, there were other cartoon containing medicines. Counsel for the claimant therefore contended that the panchanama and oral evidence of the claimant as referred to above, clearly shows that he was carrying baggage and, he was going by the truck as a person accompanying baggage. Therefore, the findings of the trial Court exonerating the Insurance Company are liable to set aside.

3. He made similar submissions in respect of other appeal being Appeal No.699 of 1997. The

claimant in this appeal is Pundlik Gangaram Shinde. However, this witness Pundlik, in his evidence, has stated that when he boarded the truck, he was having two bags full of oil cakes (fodder) and empty boxes and he paid Rs.30/- for the luggage which he was to carry in the truck. However, the panchanama does not make any mention of finding of any of two bags full of oil cakes or scatter oil cakes near around the spot of accident i.e. near to the truck. Therefore, the case of appellant Pundlike does not get any support from the oral evidence and the judgment of the trial Court in that regard exonerating the Insurance company is not liable to be disturbed.

4. However, so far as appellant Bashir in Appeal No.997 of 1998 is concerned, it is clear that in spite of their being evidence of the nature above the tribunal has wrongly exonerated the Insurance Company. Hence Appeal No.997 of 1998 is required to be allowed. Hence the Order:-

:ORDER:

Appeal No.997 of 1998 is allowed.

The impugned order of the tribunal is modified. The Insurance Company will be jointly and severally liable to pay the amount of compensation to the claimant Bashir along with the owner.

Insurance Company to deposit the amount, if same has not been paid to the owner of the truck within eight weeks in this court.

So far Appeal No.669 of 1997 is concerned, the order of the tribunal to remain as it is.

In these circumstances, no order as to costs in both the appeals.

[D.G.DESHPANDE]

04/03/2005 JUDGE.